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Supreme Court of the United States

OCTOBER TERM, 1943

No. 602

KARP METAL PRODUCTS COMPANY, INC.,

Petitioner,

against

NATIONAL LABOR RELATIONS BOARD,

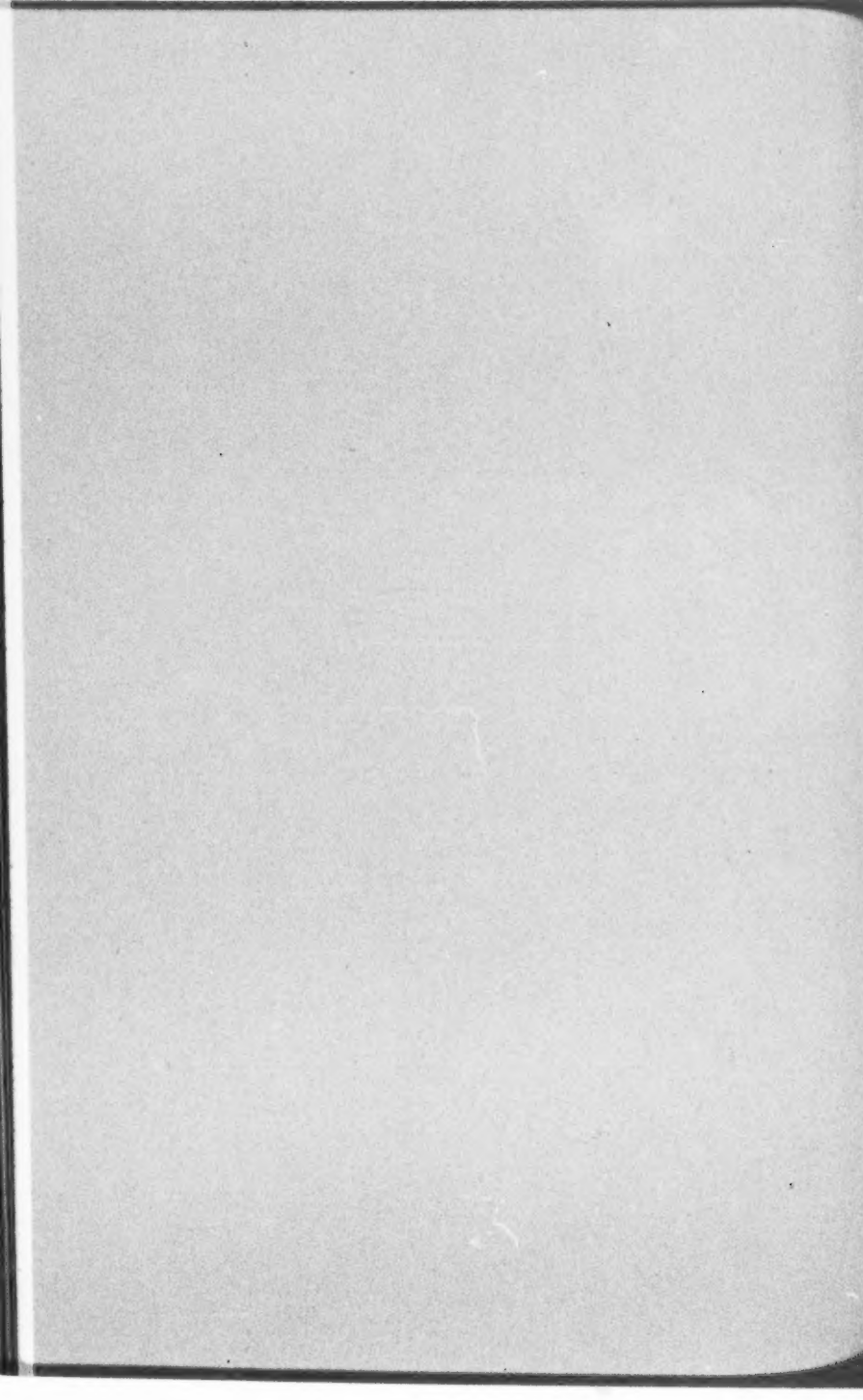
Respondent.

**PETITION FOR WRIT OF CERTIORARI
AND BRIEF IN SUPPORT THEREOF**

SAMUEL RUBINTON,

LEONARD ACKER,

Counsel for Petitioner.



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Supreme Court of the United States

OCTOBER TERM, 1943

No.

KARP METAL PRODUCTS COMPANY, INC.,
Petitioner,
against

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR WRIT OF CERTIORARI

May It Please the Court:

The petition of Karp Metal Products Company, Inc., respectfully shows to this Honorable Court:

Summary Statement of Matter Involved

Petitioner seeks to review, under Judicial Code, Section 240, 28 U. S. C., Section 347, a supplemental decree of the Court of Appeals for the Second Circuit, dated October 23, 1943, enforcing respondent's order requiring petitioner to bargain with Fabricated Metal Local 1225, United Electrical, Radio & Machine Workers of America, C. I. O., herein called Local 1225, as the exclusive representative of petitioner's employees.

Petitioner manufactures sheet metal products in New York City (6532).^{*} Upon charges filed by Local 1225 the Labor Board, on July 10, 1941, issued its complaint charging petitioner with unfair labor practices under Sections

^{*} All references, unless otherwise qualified, are to the folios of the transcript of the record before the Court of Appeals.

2(6), 7 and 8(1) of the National Labor Relations Act (6517).

The complaint, as amended, charges that petitioner, between 1937 and 1941, sponsored and dominated an organization of its employees called the Collective Bargaining Committee or Karp Metal Products Employees Union, referred to herein as the Committee, and that it refused to bargain with Local 1225, which, since about June, 1941, represented a majority of its employees, exclusive of office and clerical workers and salesmen, and committed various acts to discourage membership in that union (5552-5575).

Petitioner's answer was a general denial, as was that of the Committee, which intervened (5499-5506, 5509-5542, footnote to 6525).

Hearings were thereafter had before a Trial Examiner who issued his Intermediate Report on February 11, 1942 (6528). He found petitioner guilty of the charges and recommended that it withdraw recognition from and disestablish the Committee and bargain with Local 1225 (6183-6189).

The Petition to Reopen

On March 18, 1942, and before the Board had ruled upon the Trial Examiner's report, petitioner moved the Board to reopen the hearings and a labor organization known as Karp Employees Union, herein called the new union, moved to intervene and to reopen the hearings (6203-6305). These motions were made so that proof might be presented to show, as set forth in the affidavits upon which the applications were based, that petitioner's employees no longer desired to be represented by the Committee or by Local 1225, but that of their own free choice and uninfluenced in any way by any act of petitioner, they desired to be represented by the new union (6227, 6277, 6283, 6290).

Petitioner's application was based on the affidavit of its president (6206), and the affidavits of four of its employees (6254-6303). The application of the new union was based upon the same affidavits of these four employees, three of whom were former members of Local 1225, which affidavits are reprinted at folios 6311 to 6363.

The employees' affidavits set forth:

Petitioner's employees became dissatisfied with Local 1225 as they felt it was not interested in them (6256, 6276, 6282, 6290). Likewise, they did not desire the Committee (6259, 6282).

Following a strike in 1941 the men began talking about forming a new union which should have nothing to do with the Committee or with Local 1225, and three of them, former members of Local 1225, met in a restaurant one night to discuss the idea (6257). They decided to call a meeting to ascertain the men's wishes and one of the three prepared a proposed constitution and by-laws to submit to the meeting (6258, 6259).

The meeting was held on January 8, 1942, in a tavern, and over 100 men attended, there being no supervisory employees present (6259). The meeting was unanimously against the Committee and Local 1225 and in favor of forming their own union (6260). The men elected an organization committee, and after making changes therein adopted the proposed constitution (6260, 6282, 6289, 6294).

The new union thus formed, Karp Employees Union, was conceived and organized without suggestion, help, advice or interference from petitioner, and was not brought about nor hindered by any unfair labor practice of petitioner (6272).*

The new union has as members 145 of petitioner's 158 employees. Of these, 57 formerly were members of Local 1225, 49 formerly were members of the Committee and 39 are new employees (6272, 6274). The new union's members

* These statements, as well as the other facts set forth in the affidavit of Sam Deitsch, are re-alleged by reference in the affidavits of the other three employees (6280, 6289, 6294).

met again in January, 1942, and elected a Board of Directors, officers and a bargaining committee (6262-6265). The meeting formulated demands to be presented to petitioner (6265); the bargaining committee was instructed to present these demands and thereafter so did and negotiated in respect of them and the negotiations terminated in a written contract between petitioner and the new union on behalf of all employees, exclusive of supervisory and clerical workers, salesmen, watchmen, guards and employees of the engineering department (6265-6281). A copy of this contract, which runs for three years and recognizes the new union as the exclusive representative of such employees, appears at folios 6231 to 6250.

The affidavit of petitioner's president refers to the organization of the new union (6210, 6211) and to the discussions between its bargaining committee and him (6218, 6221). Before commencing these discussions, he made inquiries concerning the new union and became convinced that the Committee had been abandoned and that the men no longer wished to be represented by Local 1225 (6219).

Petitioner has not aided the new union, which came into existence without its assistance, knowledge or suggestion (6225); petitioner has not interfered with or dominated the new union nor has it given the new union any financial or other support and it has not restrained or coerced any employee in the exercise of his rights under the National Labor Relations Act, by discrimination in regard to hire, tenure or conditions of employment, nor has it encouraged or discouraged membership in the new union, and it has been innocent of any unfair labor practice in respect of the new union (6226); the organization of which likewise was unaffected by any unfair labor practice (6272).

The development of the new union, its formation and its negotiations with petitioner all occurred after the close of the taking of testimony before the Trial Examiner in this proceeding, and it was therefore impossible to offer proof

thereof before the Trial Examiner (6229). The motions of petitioner and the new union were made so that such proof could be offered (6204, 6277, 6290, 6307).

The Board's Decision

The decision reviews the steps in the proceedings, confirms the Trial Examiner's rulings (6516-6529), and denies the petitions of petitioner and the new union to reopen the proceedings and to intervene (6530).

The Board found petitioner guilty of the unfair practices charged (6532-6621), that petitioner refused to bargain with Local 1225, which after June 3, 1941 represented a majority in the appropriate bargaining unit (6622-6662). The Board ordered petitioner to desist from the unfair practices of which it was found guilty (6669, 6682), to withdraw recognition from the Committee (6686) and to bargain exclusively with Local 1225 (6675, 6684, 6689).

The Board ruled that the allegations in the petition to reopen and to intervene were immaterial as they referred to events subsequent to the acts of which complaint was made (6674).

The Court of Appeals' First Decision and the Subsequent Proceedings

Following its decision, the Board filed the customary petition for enforcement. The Court of Appeals, with opinion, reported at 134 F. (2d) 954, while confirming the Board in other respects, held the Board had erred in refusing to consider the petitions to intervene and to reopen, and in failing to pass upon the question of whether petitioner's earlier unfair practices continued to vitiate its employees' choice of a representative (Supplement to Transcript of Record 135-137).*

* Reference to the folios of the Supplement to Transcript of Record will hereinafter be denoted by the abbreviation "Supp."

The case was remanded to the Board to pass upon the question which the Board was instructed to determine as of the date of the hearing to be held thereon (Supp. 138, 153). The Court deferred enforcement of so much of the Board's order as directed petitioner to bargain with Local 1225 until determination of the remanded question (Supp. 137, 152). Following the Court of Appeals' decision, the Board, on May 17, 1943, issued its order, which after referring to the remanding of the case so that the petitions to intervene and to reopen could be passed upon, recited that the Board had "fully considered the averments of said petitions and having accepted said averments as true" called upon petitioner and the new union to show cause why the petitions should not be denied and the Board's decision reaffirmed (Supp. 9, 10).

The Board's order gave leave to file a verified statement of additional facts (Supp. 11). In response, the new union filed a verified statement by its president (Supp. 19) and petitioner filed a verified statement by its president (Supp. 46).

Petitioner filed a statement objecting to the Board proceeding without holding a hearing upon the petitions as directed by the Court of Appeals (Supp. 54, 55). The Board's order to show cause had recited that the Board accepted the averments of the petitions as true, and petitioner's statement read that if these averments and the verified statements were accepted as true, petitioner would waive the Board passing upon the petitions without a hearing (Supp. 55).

The statement of the new union's president sets forth that the new union originated solely from the dissatisfaction of petitioner's employees with Local 1225 and not by reason of any act of petitioner; that it was conceived and created primarily by former members of Local 1225 and of their own free will (Supp. 22). The statement sets forth that the new union had as members, 139 of the 182 persons then employed in the appropriate unit (Supp. 26), brings

the new union's history down to June 1943, and reviews its activities and demands on behalf of petitioner's employees which it negotiated with petitioner (Supp. 23-42). It further points out the new union's efforts to hold the workers to their own obligations (Supp. 42-44).

The statement of petitioner's president points out that 107 of the employees in the bargaining unit are new hands employed since June 1941 (Supp. 50, 51), which was the date on which the Board found petitioner had refused to bargain with Local 1225, which then represented a majority of the appropriate bargaining unit. The statement further points out that the change in personnel was due solely to normal and natural turnover, the taking of men into the armed forces and increase in total employment (Supp. 50, 51).

The Board's Supplemental Decision

Following the filing of petitioner's statement and of the additional verified statements by petitioner and the new union, the Board, without further proceedings, rendered a supplemental decision which denies the petitions to intervene and to reopen (Supp. 94). It reviews the unfair practices of which the Board previously had found petitioner guilty (Supp. 79-81). The Board ruled that the adherence of the employees to the new union could not be regarded as their untrammelled will, as it was the kind of action taken by employees subjected to such unfair practices (Supp. 78, 81). The Board further ruled that while the affidavits set forth that the new union was not affected by petitioner's prior unfair practices, that nevertheless the effect of such practices could not be disregarded while they remained unremedied (Supp. 84-87); that such unremedied practices must be deemed to have been the cause of the men joining the new union (Supp. 92); and that the freedom of choice given to employees by the statute could only be restored by compelling petitioner to bargain with Local 1225 (Supp. 94).

The Court of Appeals, upon the Board's application and without opinion, confirmed the Board's supplemental decision and ordered petitioner to bargain with Local 1225 as the exclusive representative of its employees.

Petitioner does not now challenge the Board's findings as to the unfair practices of which petitioner was charged or the ruling requiring the Committee to be disestablished and has fully complied with the Board's order in such respects. It attacks only the ruling made upon the remanded issue whereby the Board held the new union must be deemed to have been affected by the prior unfair practices and requiring petitioner to continue to bargain with Local 1225.

Questions Presented and Reasons Relied On For Allowance of the Writ

I

The Board erroneously ordered petitioner to bargain with Local 1225 although it was the undisputed fact that for reasons unrelated to petitioner's unfair practices, Local 1225 no longer represented a majority of the appropriate bargaining unit. The Court of Appeals ruling affirming the decision of the Board presents an interpretation of the National Labor Relations Act contrary to this Court's rulings in *National Labor Relations Board v. Fansteel Metal Corp.*, 306 U. S. 240, and in *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197.

II

The ruling that the new union must be deemed affected by the prior unfair practices of petitioner was without substantial proof and contrary to this Court's decisions in *National Labor Relations Board v. Columbian E. & S. Co.*, 306 U. S. 292, and in *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197.

III

The Board's decision on the remanded issue disregarded the arrangement made at the Board's instance, whereby petitioner waived its right to a hearing upon the assurance that the averments of the petitions to intervene and to reopen would be accepted as true. The procedure followed by the Board thereby deprives petitioner of its constitutional right to a hearing and is contrary to this Court's decisions in *Morgan v. United States*, 298 U. S. 468, and *Ohio Bell Telephone Co. v. Public Utility Commission*, 301 U. S. 292.

WHEREFORE, your petitioner prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court to review the supplemental decree of the Court of Appeals for the Second Circuit, of October 23, 1943, requiring petitioner to bargain with Local 1225 as the exclusive representative of petitioner's employees in the appropriate bargaining unit, and that your petitioner have such other and further relief as may seem meet and just, and your petitioner will ever pray.

KARP METAL PRODUCTS COMPANY, INC.

By: SAMUEL RUBINTON

LEONARD ACKER